

May 3, 1993

SDR-922-93-05
3165.3 (922.8)

CERTIFIED-RETURN RECEIPT REQUESTED *P114 729 971*

DECISION

Norfolk Energy, Inc.
Five Post Oak Park
Houston, Texas 77027

SDR 922-93-05

)

Affirmed

By letter dated March 22, 1993, you requested a State Director Review (SDR) of the February 24, 1993, decision of the Chief (Branch Chief), Branch of Fluid Minerals, Montana State Office (MSO). The decision denied your Motions to Dismiss Dockets 1-93 FED and 2-93 FED. These dockets requested Bureau Orders approving an additional well (1-93 FED) and revising spacing on Indian land (2-93 FED) in the Tiger Ridge gas field.

The request was timely received on March 22, 1993. The SDR request has been assigned case number SDR-922-93-05.

Dockets 1-93 FED and 2-93 FED were both submitted by Don R. Lee, attorney for J. Burns Brown Operating Co, and Textana, USA, respectively, and received by BLM on January 15, 1993. The dockets were included in the Montana Board's Notice of Public Hearing dated January 7, 1993. The hearing was conducted on February 5, 1993.

In your March 22, 1993, letter, paragraph 2, you state that, " ... Norfolk is being denied procedural due process by BLM's consideration without concurrence of the Montana Board of Oil and Gas Conservation Commission ("the Montana Board") of a matter which involves Norfolk's correlative rights." You further explained in paragraph 4 how Norfolk's correlative rights were affected by the Branch Chief's decision on Docket 2-93 FED.

You also stated in paragraph 2 that due to the BLM's fiduciary responsibilities to the Indian tribes, the BLM decisions are not impartial

At the hearing, John O. Brown and Norfolk both presented evidence and testimony to the BLM. Based on the evidence and testimony presented by both parties, the Branch Chief approved Docket 1-93 FED and denied Docket 2-93 FED. The Branch Chief's decision on both Dockets affects Indian lands only. As was stated in the Branch Chief's decision, the BLM's authority for issuing orders for Federal and Indian land is provided in Title 43, Code of Federal Regulations, Part 3160. Norfolk agreed that the BLM has such authority.

The Montana Board stated at the hearing that since both Dockets involved Indian lands only, no decision was necessary from the Board. The Board chose not to participate further.

Since the BLM has the authority to issue spacing on Federal and Indian land and a hearing was conducted on both Dockets, I conclude that Norfolk was not denied due process. Also, Norfolk did not present any evidence that the Branch Chief's decision was not impartial. I hereby affirm the Branch Chief's decision, dated February 24, 1993, denying Norfolk's request to dismiss Dockets 1-93 FED and 2-93 FED.

This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 3165.4, 4.411, 4.413 and Form 1842-1 (Enclosure 1). If an appeal is taken, Notice of Appeal must be filed in the MSO at the above address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

/s/ Thomas P. Lonnie

Thomas P. Lonnie
Deputy State Director
Division of Mineral Resources

1 Enclosure
1-Information Sheet (4 pp)

cc:

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Superintendent, Rocky Boys Agency, Box Elder, MT 59521
Area Office (360), BIA, Federal Building, 216 No. 26th St., Billings, MT 59101
Chippewa Cree Tribe, Rocky Boy Route, PO Box 544, Box Elder, MT 59521
John O. Brown, J. Burns Brown Operating Co., 2091 Rich St., Havre, MT 59501
Office of the Field Solicitor, PO Box 31394, Billings, MT 59107-1394